Copyrighted Material

New Constitutionalism and World Order

Edited by **Stephen Gill** and **A. Claire Cutler**

New Constitutionalism and World Order

Edited by

Stephen Gill and A. Claire Cutler

CAMBRIDGE
UNIVERSITY PRESS

CAMBRIDGE
UNIVERSITY PRESS

University Printing House, Cambridge CB2 8BS, United Kingdom

Published in the United States of America by Cambridge University Press, New York

Cambridge University Press is part of the University of Cambridge.

It furthers the University's mission by disseminating knowledge in the pursuit of education, learning and research at the highest international levels of excellence.

www.cambridge.org
Information on this title: www.cambridge.org/9781107053694

© Cambridge University Press 2014

This publication is in copyright. Subject to statutory exception and to the provisions of relevant collective licensing agreements, no reproduction of any part may take place without the written permission of Cambridge University Press.

First published 2014

Printed in the United Kingdom by Clays, St Ives plc

A catalogue record for this publication is available from the British Library

Library of Congress Cataloguing in Publication data
New constitutionalism and world order / edited by Stephen Gill and A. Claire Cutler.
pages cm
Includes bibliographical references and index.
ISBN 978-1-107-05369-4 (hardback)
1. Neoliberalism. 2. International organization. 3. Globalization – Economic aspects. 4. Globalization – Political aspects. 5. International relations. 6. World politics – 21st century. I. Gill, Stephen.
II. Cutler, A. Claire.
JZ1318.N483 2014
342'.001–dc23
2013032796

ISBN 978-1-107-05369-4 Hardback

Cambridge University Press has no responsibility for the persistence or accuracy of URLs for external or third-party internet websites referred to in this publication, and does not guarantee that any content on such websites is, or will remain, accurate or appropriate.

Contents

List of figures *page* x
List of contributors xi
Acknowledgements xiii
List of acronyms xvi

1 New constitutionalism and world order: general introduction 1
STEPHEN GILL AND A. CLAIRE CUTLER
Aims and considerations 1
The historical context for new constitutionalism 5
Criticisms of the new constitutional concept 8
What is 'new' about the new constitutionalism? 11
Themes, hypotheses and questions: overview of the contributions 14
Hegemony, supremacy and the power of capital 14
Law, legitimacy and legitimation 16
Agency and contestation 17
A note on the organization of this book 19

Part I Concepts 23

2 Market civilization, new constitutionalism and world order 29
STEPHEN GILL
The constitution of market civilization: the old and the new 29
New constitutionalism and the rule of law 34
Three dimensions of new constitutionalism 37
Measures to reconfigure state apparatuses 38
Measures to construct and extend capitalist markets 39
Measures for dealing with dislocations and contradictions 40
Conclusion: from transformative resistance to the post-modern Prince 42

3 New constitutionalism and the commodity form of global capitalism 45
A. CLAIRE CUTLER
Introduction 45
Commodity fetishism and the commodity form of law 47
The commodification of nature 50
Contesting new constitutionalism 57

4 The rule of law as the *Grundnorm* of the new constitutionalism 63
CHRISTOPHER MAY
The *Grundnorm*: from legal to political analysis 65
New constitutionalism, market civilization and disciplinary neo-liberalism 67
(Re-)producing the norm: maintaining the rule of law 70
Professionalization 70
Technical assistance 72
New constitutionalism and the rule of law 74

Part II Genealogy, origins and world order 77

5 Toward a genealogy of the new constitutionalism: the empire of liberty and domination 81
TIM DI MUZIO
The new constitutionalism 83
Colonial elites and the American Revolutionary War 85
The constitution of liberty and domination 90
Conclusion 93

6 The origins of the new constitutionalism: lessons from the 'old' constitutionalism 95
RAN HIRSCHL
The insurance logic of constitutionalization and judicial empowerment 97
Back to the new constitutionalism 104

Part III Multilevel governance and neo-liberalization 109

7 When the global inhabits the national: fuzzy interactions 115
SASKIA SASSEN
The global capital market: power and norm-making 117
The partial disembedding of specialized state operations and non-state actors 118
The state: one site for non-state actors 120
Conclusion 123

8 New constitutionalism and variegated neo-liberalization 126
NEIL BRENNER, JAMIE PECK AND NIK THEODORE
The global and the national in the new constitutionalism 127
Geographies of neo-liberalization 129
Modalities of neo-liberalization 130
Pathways of neo-liberalization 131
Toward a moving map of neo-liberalization 133
Regulatory experiments 133
Systems of inter-jurisdictional policy transfer 133
Transnational rule-regimes 134
Restless landscapes of neo-liberalization 134
Scenarios of counter-neo-liberalization: toward a progressive new constitutionalism? 138
Conclusions 142

9 New constitutionalism and multilevel governance 143
ADAM HARMES
Introduction 143
New constitutionalism and the neo-liberal separation of the economic and the political 144
Neo-liberalism and 'market-preserving federalism' 147
Market-preserving regionalism and globalism 152
Social forces and multilevel governance 154
Conclusion: prospects for progressive multilevel governance 156

Part IV Trade, investment and taxation 159

10 How to govern differently: neo-liberalism, new constitutionalism and international investment law 165
DAVID SCHNEIDERMAN
Neo-liberalism under construction 167
International investment law under construction 171
Rolling back the new constitutionalism 175

11 Trade agreements, the new constitutionalism and public services 179
SCOTT SINCLAIR
The GATS and the NAFTA 180
Impacts on public services 182
Confining public services within existing boundaries 183
Increasing the bargaining power of global corporations 184
Applying pro-competitive regulation to previously socialized services 186
Locking in future privatization 188
Shifting the balance against public services 189
Dynamism of the agreements 190
Trade negotiations between the EU and Canada 192
Conclusion 195

12 New constitutionalism, international taxation and crisis 197
DRIES LESAGE, MATTIAS VERMEIREN AND SACHA DIERCKX
Introduction: new constitutionalism and taxation 197
The political economy of global taxation after the crisis 199
The crisis in/of neo-liberalism and taxation 199
Taxing the financial sector 202
Taxing the capital of wealthy citizens 205
Corporate taxation 208
Conclusion 210

Part V Social reproduction, welfare and ecology 211

13 Social reproduction, fiscal space and remaking the real constitution 219
ISABELLA BAKKER
Introduction 219
New constitutionalism, social reproduction and fiscal squeeze 222
Expropriating the commons and extended commodification 225
Enlarging spaces of resistance 228
Creating fiscal space 228
Remaking the real constitution 231

14 New constitutionalism, disciplinary neo-liberalism and the locking in of indebtedness in America 233
ADRIENNE ROBERTS
Introduction 233
Debt and the reprivatization of social reproduction 235
The new constitutionalism and bankruptcy protection 240
The state, the law and the coercive relations of debt 242
Conclusion 245

15 New constitutionalism, neo-liberalism and social policy 247
JANINE BRODIE
Introduction 247
Globalization and social policy 249
Predictions 249
Outcomes 252
An unsettled policy field 253
New 'constitutions' of the social 254
Epilogue: social policy and the Great Recession 258

16 New constitutionalism and the environment: a quest for global law 261
HILAL ELVER
Introduction 261
Evolution of environmental law and constitutionalism 262
Globalization, environment and inequality 263

Environmentalism versus corporate governance? 266
Voluntary codes of conduct 266
Market-based regulations 267
Public–private partnerships 268
A new global challenge: climate change 269
Responses to the environmental challenge 273

Part VI Globalization from below and prospects for a just new constitutionalism 277

17 Constitutionalism as critical project: the epistemological challenge to politics 281
GAVIN W. ANDERSON
Introduction 281
Political economy and constitutionalism 282
How *new* is new constitutionalism? 285
Struggles over hegemony: imagining post-imperial new constitutional forms 289
Conclusion 293

18 New constitutionalism and geopolitics: notes on legality and legitimacy and prospects for a just new constitutionalism 295
RICHARD FALK
Points of departure 296
Distinguishing legality and legitimacy 297
International law and the 'old' constitutionalism 299
Managing nuclear weaponry and new constitutionalism 303
International criminal accountability 305
The post-9/11 counterterrorist challenge 306
Imperial new constitutionalism 308
Neo-liberal globalization and the new constitutionalism 309
A concluding comment 312

Glossary 313
Appendix 326
Key questions and issues 326
Present and future prospects 327
Bibliography 328
Index 363

Figures

8.1 Historical geographies of modern constitutionalism *page* 128
8.2 From disarticulated to deep(ening) neo-liberalization: a stylized outline 135
8.3 Counter-neo-liberalization: future pathways and scenarios 139
14.1 Uses of home equity extraction 2001–8 237
14.2 Average net worth of US households by race, 2005 and 2009 239

Contributors

GAVIN W. ANDERSON, Senior Lecturer, School of Law, University of Glasgow, Scotland.

ISABELLA BAKKER, Professor of Political Science and Trudeau Fellow, York University, Toronto, Canada.

NEIL BRENNER, Professor of Urban Theory, Graduate School of Design, Harvard University, Boston, USA.

JANINE BRODIE, Distinguished University Professor in Political Economy and Social Governance; Trudeau Fellow, University of Alberta, Edmonton, Canada.

A. CLAIRE CUTLER, Professor of International Law and International Relations, Political Science Department, University of Victoria, Canada.

TIM DI MUZIO, Assistant Professor in International Relations, University of Wollongong, Australia.

SACHA DIERCKX, Doctoral Researcher, Ghent Institute for International Studies, Ghent University, Belgium.

HILAL ELVER, Research Professor, Global and International Studies, University of California, Santa Barbara, USA.

RICHARD FALK, Albert G. Milbank Professor Emeritus of International Law and Politics, Princeton University; Visiting Distinguished Professor in Global and International Studies at the University of California, Santa Barbara, USA.

STEPHEN GILL, Distinguished Research Professor of Political Science, Communication and Culture, York University, Toronto, Canada.

ADAM HARMES, Associate Professor in Political Science, University of Western Ontario, Canada.

RAN HIRSCHL, Canada Research Chair Professor of Political Science and Law, University of Toronto, Canada.

DRIES LESAGE, Professor of Globalization and Global Governance, Institute for International Studies, Ghent University, Belgium.

CHRISTOPHER MAY, Professor of Political Economy, Lancaster University, UK.

JAMIE PECK, Research Professor in Urban and Regional Political Economy, Department of Geography, University of British Columbia, Vancouver, Canada.

ADRIENNE ROBERTS, Assistant Professor in International Studies, University of Manchester, UK.

SASKIA SASSEN, Robert S. Lynd Professor of Sociology and Co-Chair Committee on Global Thought, Columbia University, New York, USA.

DAVID SCHNEIDERMAN, Professor of Law and Political Science, Faculty of Law, University of Toronto, Canada.

SCOTT SINCLAIR, Senior Research Fellow, Canadian Centre for Policy Alternatives, Ottawa, Canada.

NIK THEODORE, Associate Professor of Urban Policy and Planning, University of Illinois at Chicago, USA.

MATTIAS VERMEIREN, Postdoctoral Researcher, Ghent Institute for International Studies, Ghent University, Belgium.

8 New constitutionalism and variegated neo-liberalization

Neil Brenner, Jamie Peck and Nik Theodore

Sparked by the pioneering interventions of Stephen Gill (1995a, 1998b, 2000, 2003), the literature on the new constitutionalism has provided an illuminating basis for conceptualizing the market-disciplinary regulatory reorganization of world capitalism since the 1980s. This work represents an important contribution to the ongoing debate on neo-liberalism, which has long been a lightning rod for discussions of contemporary capitalism, its regulatory dynamics, its crisis tendencies and its possible futures.

Studies of new constitutionalism have focused primarily on the worldwide legal architectures of market-disciplinary regulation, and have tended to emphasize the geopolitical institutionalization of marketizing, commodifying rules since the 1980s. Whereas the formation of global rule-regimes has been investigated in detail by analysts of new constitutionalism, less attention has been devoted to the role of inter-jurisdictional policy transfer networks and processes of regulatory experimentation at both the national and subnational scales. Building upon the concept of variegated neo-liberalization (Brenner *et al.* 2010), we argue that systematic attention to each of the latter dimensions of regulatory restructuring can strengthen the methodological apparatus for studies of new constitutionalism: it could provide the basis for analyzing the evolution of neo-liberalization tendencies, and of formations of new constitutionalism itself. Through such an approach, moreover, one can productively explore scenarios for counter-neo-liberalizing forms of regulatory restructuring within contemporary capitalism.

In our conception, neo-liberalization processes are variegated in so far as they systemically produce geo-institutional differentiation. We emphasize the systemically produced uneven development of neo-liberalizing projects across territories, scales and places, as well as the evolution of such projects over time and across space. In our view, a more sustained engagement with the problematic of variegated regulation can advance our understanding of new constitutionalism, its historical-geographical vicissitudes, its crisis tendencies and the possibility of its transcendence.

This chapter is thus a sympathetic critique of the extant literature on new constitutionalism, articulated from an allied methodological stance that aims more explicitly to explore the uneven geographical development of regulatory arrangements, forms and strategies under neo-liberalizing capitalism.

The global and the national in the new constitutionalism

According to Stephen Gill (2000), the new constitutionalism of the post-1980s period entails not only a rolling back of post-war restrictions on capitalist property rights, but the rolling forward of a new international juridical framework that systematically privileges the discretionary rights of capital on a world scale. Specifically, Gill argues, the new constitutionalism entails the construction of supranational institutional forms and the reconfiguration of existing state apparatuses in ways that 'lock in' the market-disciplinary agenda of globalized neo-liberalism. This process of neo-liberal institutional lock-in is composed, above all, of measures to promote maximal capital mobility, to extend capitalist markets into previously decommodified realms and to insulate economic relations from democratic control.

Gill's account of the evolution of modern constitutionalism since the late nineteenth century contains a suggestive theorization of the changing geo-historical construction of the global/national relationship (see Figure 8.1). Under both liberal and progressive constitutionalism, it is the national that appears actively to constitute the systemic features of the global capitalist order. In the case of liberal constitutionalism, it is the British state that attempts to institutionalize a self-regulating market on a world scale through the gold standard system; the resultant dislocations are then thought to ricochet back into Britain and other national societies in the form of wage volatility. Concomitantly, even though Britain aided in the construction of the Bretton Woods currency system after the Second World War, progressive constitutionalism was largely centred upon, and dominated by, the United States.

By contrast, the new constitutionalism appears to entail a direct inversion of the historically entrenched national/global relationship. The global is no longer seen as a product of nationally steered institutionalizations. Instead, it is now the global, institutionalized in the form of various multilateral apparatuses, that imposes market discipline upon national states. Whereas, under liberal constitutionalism, the global was only thinly institutionalized through the gold standard and incipient international free trade agreements, the new constitutionalism is composed of a relatively dense institutional web of market-disciplinary apparatuses at both global

	Liberal constitutionalism	Progressive constitutionalism	New constitutionalism
Historical context	Late nineteenth and early twentieth centuries	Post-Second World War period until the mid 1970s	Post-1980s period of 'disciplinary neo-liberalism'
Relation to market order	Market-constructing: goal is to create a self-regulating market on a world scale through the commodification of land, labour and capital	Market-restraining: goal is to 'embed' markets by tendentially restricting capitalist property rights	Market-disciplinary: goal is to institutionalize capitalist property rights on a world scale
Institutional expressions	Nineteenth-century national constitutions enshrining private property rights; gold standard system; high imperialism	Evolution of national constitutions enshrining private property rights in a context of mass labour movements; Bretton Woods monetary system; decolonization and post-colonial state formation	IMF, WTO, World Bank, World Economic Forum, EU, NAFTA
Global/ national relationship	Global order constructed through the hegemonic project of Britain (see also Polanyi 1944/1957)	Global order constructed through multilateral and national institutions, but steered primarily by the United States (see also Ruggie 1983)	Global order constructed through a range of worldwide and supranational institutional apparatuses in close conjunction with the reorganization of national state structures (see also Sassen 2007)

Figure 8.1 Historical geographies of modern constitutionalism
Source: based on Gill 1998a, 1998b, 2000 and 2003.

and supranational scales, from the IMF, the World Bank and the WTO to the EU, NAFTA and other multilateral organizations. The disciplinary nature of this worldwide institutional web consists not only in its rigid orientation toward market rule, but also in its role in systematically narrowing the socioeconomic policy parameters available to national states.

The new constitutionalism establishes a worldwide institutional grid that offers transnational capital multiple exit options within putatively suboptimal regulatory environments. At the same time, it shrinks and weakens established relays of parliamentary-democratic control over capitalist investment activities. Consequently, the new constitutionalism can be understood as a means to discipline national states to create internal political-institutional spaces oriented toward extended, accelerated capital accumulation.

The distinctive contribution of new constitutionalist approaches is to foreground the global dimensions of contemporary market-oriented regulatory transformations and to excavate the quasi-disciplinary, undemocratic modalities through which market rule is being realized. As this work productively demonstrates, neo-liberalization is implemented, consolidated and reproduced through a complex of world-scale, multilateral and supranational juridical-institutional rearrangements that impose new, relatively circumscribed parameters – in effect, an encompassing 'rule-regime' (Peck 2002) – for regulatory experimentation across subordinate places, territories and scales. In our view, however, there remain several methodological and substantive blind spots that undercut the capacity of such approaches fully to illuminate these parameterizing rule-regimes, particularly at national and subnational scales.

Geographies of neo-liberalization

One side effect of the otherwise productive emphasis on the global institutionalization of market-disciplinary regulatory projects is a relative neglect of nationally and subnationally scaled processes of regulatory restructuring. For instance, Gill's model of the new constitutionalism appears to posit a unidirectional logic in which global and supranational institutions impose disciplinary constraints 'downwards' on national states. While there is no doubt that the devolutionary dumping of regulatory risks and the subnational canalization of 'appropriate' regulatory responses represent key dimensions of neo-liberal political strategy, the latter cannot entirely (pre-)programme the shape, timing or substantive content of national, regional and local institutional (re-)configurations. In fact, Gill (1995a: 412) acknowledges that 'discipline is both a transnational and a local dimension of power', but his accounts tend to focus almost exclusively on the former: he emphasizes the transnational construction of policy-making parameters, but he does not explore the possibility of differential strategies of (national and local) territorial adaptation to this globalizing disciplinary regime. Concomitantly, Gill does not fully consider the ways in which the process of global

parameterization is reciprocally shaped and reshaped through sub-global forms of regulatory experimentation, interspatial policy transfer and institutional re-jigging.

Of course, given Gill's concern with frameworks of world order, reproaching this tradition for its underdeveloped analysis of sub-global regulatory transformations might appear to exemplify the category mistake of 'misplaced concreteness' – that is, expecting it to yield concrete descriptions when only an abstract portrayal is intended. However, the issue here is not merely one of abstraction versus concreteness; it is also methodological. In so far as market-disciplinary institutions and policies are implemented in different forms and degrees across places, scales and territories, the landscapes of neo-liberalization are constitutively and systemically uneven. Neo-liberalization projects build on, exploit, intensify and re-canalize inherited differences amongst (supranational, national and subnational) regulatory landscapes. Consideration of such systemically produced variegations should be more than an empirical addendum to the global portrait of parameterization. Such variegations are co-constitutive of the regulatory transformations under investigation, including those associated with the process of parameterization itself.

Modalities of neo-liberalization

On one reading Gill's analysis implies that the extension of neo-liberalization is basically a process of imposition, in which formerly market-restraining domestic political spaces are subjected to the disciplinary agendas of global institutions. This emphasis on 'downward' disciplinary imposition illuminates an important aspect of neo-liberalization processes: the undemocratic subjection of national populations to global or supranational forms of market rule. However, it is problematic to assume that neo-liberalization processes normally or necessarily move along a global-to-national vector, because this leaves unexamined other potentially significant interspatial circuits through which neo-liberalized regulatory programmes may be animated. For instance, attention must also be paid to 'upwards' relays within inter-scalar hierarchies; transversal manoeuvres across divergent institutional sites within a regulatory landscape; or still more elusive, promiscuous arcs of policy transfer that defy easy classification (Bockman and Eyal 2002; Dezalay and Garth 2002; Ferguson and Gupta 2002).

Furthermore, this super-ordinate gaze fails to take account of the strategic role of national, regional and local state apparatuses as active progenitors of neo-liberalizing institutional reforms and policy prototypes,

and as arenas in which market-oriented regulatory experiments are initiated, consolidated and even extended. Thus understood, neo-liberal reform 'models' are not simply designed within multilateral institutions and then implemented *tout court* at national and subnational scales. More frequently, such models are polymorphic, inter-scalar constructions – born of transnational, national and (newly devolved) subnational institutional reform frameworks; honed, customized and proved through policy experimentation; revamped in light of unanticipated failures, conflicts and crisis tendencies; and then sometimes also purposefully (re-)circulated back into the interspatial networks of policy transfer from which they originated (Peck 2002).

Pathways of neo-liberalization

Gill's work offers a critical account of the broader, crisis-riven geo-economic context in and through which contemporary and historical crisis tendencies are generated: he decisively rejects the assumption that processes of regulatory restructuring will preserve politico-institutional stability, emphasizing instead the polarizing, dysfunctional ramifications of disciplinary neo-liberalism. Here, a key analytical space is reserved for a Polanyian 'double-movement', implying that the disruptive effects of neo-liberalization may engender both progressive and reactionary responses. Thus, even when projects of market rule are imposed comprehensively upon a social formation – for instance, through the subjection of impoverished, politically weak nations to structural adjustment policies – the outcomes invariably include new forms of dislocation, conflict and political mobilization. The project of neo-liberalization is thus said not only to disrupt established regulatory practices and social conventions, but to open up new political spaces in which alternatives to transnational corporate power may be articulated.

Market-driven regulatory projects are indeed permeated by crisis tendencies, but it would be a mistake to focus one-sidedly on the 'response' side of the Polanyian double-movement – that is, on the oppositional social forces and political movements provoked by neo-liberalization projects. While this emphasis is certainly well justified, we would argue that it has led many analysts to bracket the ways in which neo-liberalization projects are iteratively reconstituted in conjunction with both emergent modes of resistance and their own crisis tendencies. The co-optation of market-constraining interests and institutions; the erection of flanking mechanisms to manage the polarizing consequences of intensified commodification; and the reinforcement or mutation of neo-liberal

policies in the face of opposition or outright failure – all these are part of the extended dynamics of institutional creative destruction under conditions of deepening neo-liberalization.[1] Each 'round' of neo-liberalization reshapes the institutional landscapes through which subsequent neo-liberalization projects unfold. The substantive character of each round of neo-liberalization is forged through the contextually specific forms of friction, resistance and crisis that are engendered through this combative encounter. In effect, the interplay between neo-liberalization projects and inherited institutional landscapes produces a propulsive ricocheting of multiple, differentially spatialized yet interconnected double-movements across places, territories and scales. Whatever its spatial morphology and evolutionary pathway, each of these reactions represents a path-dependent expression of the regulatory incursions that preceded it. Each such reaction also opens up a determinate complex of politico-institutional spaces for subsequent double-movement dynamics. Given the extraordinary diversity of path-dependent double-movements involved in such regulatory transformations, their polymorphic spatial morphologies and their contextually specific evolutionary trajectories, a singular, world-scale application of the Polanyian double-movement scheme would seem to offer a relatively undifferentiated depiction of neo-liberalization processes. This is not simply a matter of movements in the global tides; currents, eddies and blockages in regulatory dynamics at all spatial scales make a (constitutive) difference.

The evolutionary pathways of neo-liberalization processes cannot be understood adequately either through an investigation of how nationally specific neo-liberal 'transitions' are guided 'from above', or alternatively, through a more contextually circumscribed periodization of nationally specific 'varieties of neo-liberalism' (Cerny *et al.* 2005). Rather, the mottled, striated and volatile dynamics of neo-liberalization across places, territories and scales have been co-evolving with the tendentially neo-liberalizing global, supranational and multilateral rule-regimes that have been explored so incisively within new constitutionalist scholarship. Through a mutually recursive process of institutional and spatial structuration, such rule-regimes variously collide with, parameterize and iteratively meld with these subordinate institutional landscapes. While the geographies and choreographies of such rule-regimes are at least partly forged through their combative interactions with subordinate institutional landscapes, the precise nature and implications of this co-evolution clearly require more systematic investigation.

[1] Editors' footnote: see Chapter 2 by Stephen Gill on measures for dealing with dislocations and contradictions, and associated mechanisms of incorporation.

Toward a moving map of neo-liberalization

Harvey has underscored the difficulties of constructing a 'moving map of the progress of neoliberalization on the world stage since 1970'. The challenge, Harvey (2005: 87) proposes, is 'to understand how local transformations relate to broader trends' by tracking the 'turbulent currents of uneven geographical development' that are produced through neo-liberalization processes.

How to confront this challenge, and how might studies of new constitutionalism contribute to it? What would a moving map of neo-liberalization processes during the last 30-plus years look like? With a few notable exceptions, the extant literatures on neo-liberalization have spawned no more than partial responses to this challenge, not least due to their underdeveloped conceptualizations of regulatory uneven development (Brenner *et al.* 2010). While they have identified any number of key features within the perpetually morphing landscapes of post-1970s market-disciplinary regulatory change, including the global rule-regimes analyzed by new constitutionalist scholars, most accounts have been less concerned with relating these elements to one another, and to the broader 'currents of uneven geographical development' to which Harvey (2005: 87) refers. In order to confront these tasks, we distinguish three core analytical dimensions of neo-liberalization processes.

Regulatory experiments

These are place-, territory- and scale-specific projects designed to impose, intensify or reproduce market-disciplinary modalities of governance. Such projects are necessarily path dependent, and generally entail both a destructive moment (efforts to roll back non-market, anti-market or market-restraining regulatory arrangements) and a creative moment (strategies to roll forward a new politico-institutional infrastructure for marketized regulatory forms).

Systems of inter-jurisdictional policy transfer

These are networks of knowledge sharing through which neo-liberal policy prototypes are circulated, generally transnationally, for redeployment elsewhere. By establishing certain types of regulatory strategies as 'prototypical', such networks enhance the ideological legitimacy of neo-liberal policy templates while extending their availability as readily accessible, all-purpose 'solutions' to contextually specific regulatory problems. At the same time, however, even the most apparently prototypical forms

of neo-liberal policy are qualitatively transformed through their circulation through such networks. Although they may appear to be readily available for smooth transfer within a fast-moving circulatory network, and thus able to promote a homogenization of regulatory space, such policy mobilities remain embedded within politico-institutional contexts that shape their form, content, reception and evolution, leading to unintended and intensely variegated outcomes. In the context of neo-liberalization processes, therefore, inter-jurisdictional policy transfer is an important mechanism not only of spatial consolidation, but of institutional differentiation.

Transnational rule-regimes

These are large-scale institutional arrangements, regulatory frameworks, legal systems and policy relays that impose determinate 'rules of the game' on contextually specific forms of policy experimentation and regulatory reorganization, thereby framing the activities of actors within specific politico-institutional parameters.

Restless landscapes of neo-liberalization

Any mapping of neo-liberalization processes derived from these distinctions would contrast sharply with the diffusionist models that prevail in the orthodox literature, which are closely aligned with the anticipation of policy convergence and various forms of methodological nationalism. So too would it contrast markedly with the global-to-national models of neo-liberal imposition associated with some strands of new constitutionalist scholarship. But such a mapping could not, in itself, illuminate every concrete feature on the landscapes of neo-liberalization, across differential spatio-temporal contexts. Nonetheless, on a more abstract level, such an approach can serve as an analytical basis on which to interpret the creatively destructive trajectories and uneven development of neo-liberalization processes since the 1970s.

To this end, building on the above distinctions, Figure 8.2 outlines a stylized periodization of post-1970s neo-liberalization processes. In this figure, the three dimensions of regulatory restructuring no longer serve as ideal-typical categories, but are now mobilized to illuminate the historical-geographical evolution of neo-liberalization processes themselves. The top row delineates each of the three distinctions specified above, understood as interlinked dimensions of regulatory restructuring under conditions of ongoing neo-liberalization. The first column specifies a generic, decade-based timeline, from the 1970s through the 2000s. The

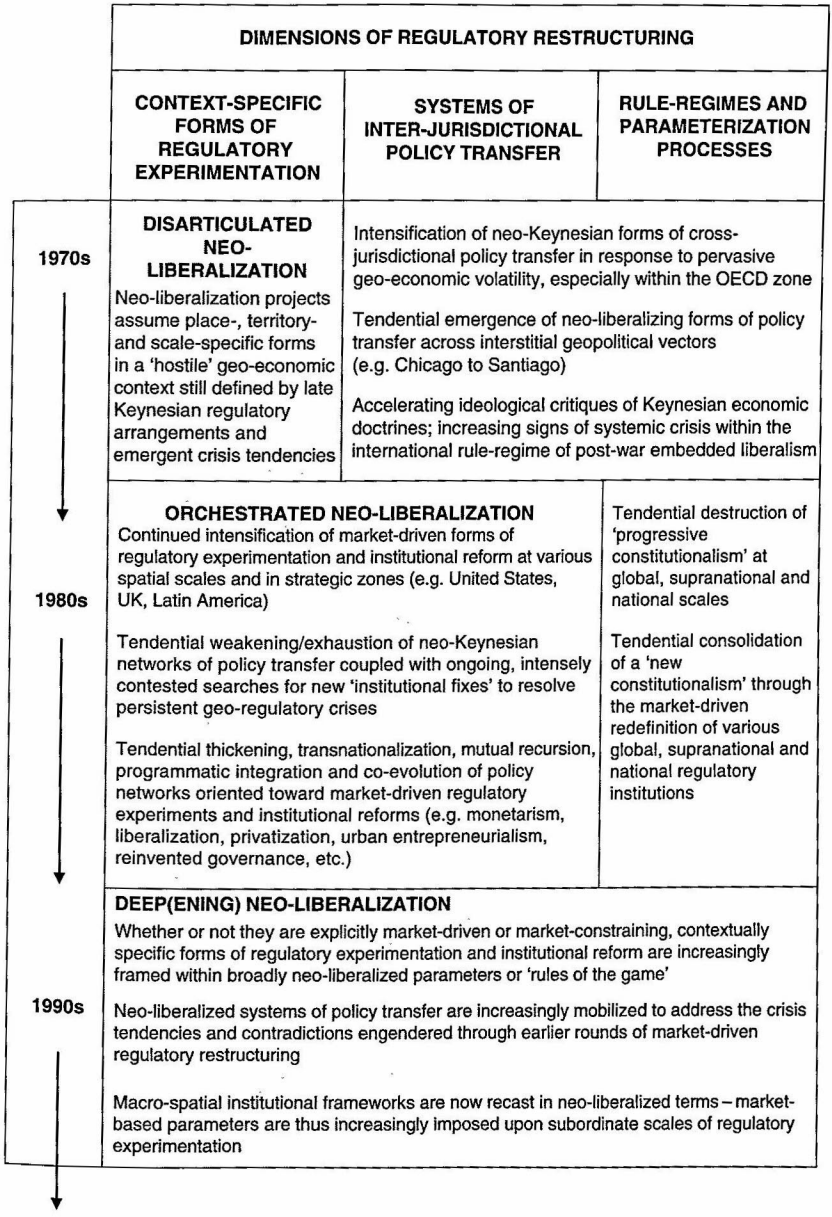
DIMENSIONS OF REGULATORY RESTRUCTURING
CONTEXT-SPECIFIC FORMS OF REGULATORY EXPERIMENTATION
SYSTEMS OF INTER-JURISDICTIONAL POLICY TRANSFER
RULE-REGIMES AND PARAMETERIZATION PROCESSES
1970s
DISARTICULATED NEO-LIBERALIZATION
Neo-liberalization projects assume place-, territory- and scale-specific forms in a 'hostile' geo-economic context still defined by late Keynesian regulatory arrangements and emergent crisis tendencies
Intensification of neo-Keynesian forms of cross-jurisdictional policy transfer in response to pervasive geo-economic volatility, especially within the OECD zone
Tendential emergence of neo-liberalizing forms of policy transfer across interstitial geopolitical vectors (e.g. Chicago to Santiago)
Accelerating ideological critiques of Keynesian economic doctrines; increasing signs of systemic crisis within the international rule-regime of post-war embedded liberalism
1980s
ORCHESTRATED NEO-LIBERALIZATION
Continued intensification of market-driven forms of regulatory experimentation and institutional reform at various spatial scales and in strategic zones (e.g. United States, UK, Latin America)
Tendential weakening/exhaustion of neo-Keynesian networks of policy transfer coupled with ongoing, intensely contested searches for new 'institutional fixes' to resolve persistent geo-regulatory crises
Tendential thickening, transnationalization, mutual recursion, programmatic integration and co-evolution of policy networks oriented toward market-driven regulatory experiments and institutional reforms (e.g. monetarism, liberalization, privatization, urban entrepreneurialism, reinvented governance, etc.)
Tendential destruction of 'progressive constitutionalism' at global, supranational and national scales
Tendential consolidation of a 'new constitutionalism' through the market-driven redefinition of various global, supranational and national regulatory institutions
1990s
DEEP(ENING) NEO-LIBERALIZATION
Whether or not they are explicitly market-driven or market-constraining, contextually specific forms of regulatory experimentation and institutional reform are increasingly framed within broadly neo-liberalized parameters or 'rules of the game'
Neo-liberalized systems of policy transfer are increasingly mobilized to address the crisis tendencies and contradictions engendered through earlier rounds of market-driven regulatory restructuring
Macro-spatial institutional frameworks are now recast in neo-liberalized terms – market-based parameters are thus increasingly imposed upon subordinate scales of regulatory experimentation

Figure 8.2 From disarticulated to deep(ening) neo-liberalization: a stylized outline

Note: Shaded cells denote the dimensions of regulatory restructuring in which neo-liberalization tendencies have been most pronounced. Even in the shaded cells, however, other forms of regulatory restructuring coexist alongside neo-liberalization tendencies.

shaded cells denote the dimensions of regulatory restructuring in which, on our reading, neo-liberalization has been most pronounced since its initial institutional elaboration in the 1970s. Concomitantly, the white cells in the upper quadrants denote zones of regulatory activity that, during the corresponding decade(s) specified in the first column, were largely configured according to market-restraining principles (Keynesianism, progressive constitutionalism). With each successive decade, the shaded zones in the figure are widened to include an additional column. This signifies what we view as a tendential, macro-spatial shift from disarticulated to deepening forms of neo-liberalization.

As depicted in the first main row of Figure 8.2, disarticulated neo-liberalization crystallized during the 1970s, and was based predominantly on place-, territory- and scale-specific forms of market-disciplinary regulatory experimentation. Of course, neo-liberal doctrine had emerged during the 1930s and 1940s, when it was mobilized as a critique of the consolidating Keynesian political-economic order. However, it was not until the early 1970s that real-time experiments in neo-liberalization were elaborated, albeit within a largely hostile geo-economic context defined by late Keynesian regulatory arrangements and strategies of crisis management.

During the 1980s, a new frontier of neo-liberalization was opened, as a repertoire of neo-liberal policy templates began to circulate transnationally and to acquire the status of all-purpose 'solutions' to diverse regulatory problems and crisis tendencies (Figure 8.2, row 2). While this occurred partly through a colonization of extant, neo-Keynesian policy transfer networks (for instance, within the Organisation for Economic Co-operation and Development (OECD), the World Bank and the IMF), it also involved the construction of new inter-jurisdictional circuits for the promotion, legitimation and delivery of neo-liberal policy templates, mediated through an increasingly influential cadre of experts and 'technopols' such as the infamous Chicago Boys. Through a series of trial-and-error manoeuvres, many of the core neo-liberalizing regulatory experiments of the 1970s – such as privatization, financialization, liberalization, workfare and urban entrepreneurialism – subsequently acquired prototypical status, and became key reference points for subsequent projects of neo-liberalization. Neo-liberalizing forms of regulatory restructuring were mobilized in diverse policy arenas by national, regional and local institutions not only in North America and Western Europe, but also within an uneven, globally dispersed patchwork of post-developmental states and post-communist zones from Latin America and Sub-Saharan Africa to Eastern Europe and Asia. In order to facilitate the circulation and legitimation of market-based reform strategies,

new extra-jurisdictional relays were constructed. Such fast policy networks were thickened by the late 1980s following the Latin American debt crisis and, subsequently, the collapse of the Soviet bloc. The previous formation of disarticulated neo-liberalization was thus transformed into a more tightly networked, transnationally orchestrated formation of mutually recursive, inter-referential policy reform strategies. Under these circumstances, neo-liberalization projects no longer appeared as relatively isolated instances of market-disciplinary regulatory experimentation lodged within a hostile political-economic environment. Instead, patterns of reciprocal influence, coordination and exchange were established amongst neo-liberalizing reform programmes across diverse jurisdictional contexts and scales. Increasingly, such programmes were recursively interconnected in order to accelerate, deepen and intensify their transnational circulation and implementation.

This deepening formation of neo-liberalization was further consolidated during the 1990s, as market-disciplinary reform agendas were institutionalized on a world scale through an array of multilateral, multilevel and supranational juridico-institutional rearrangements. This tendency is depicted in the lowest, fully shaded row of Figure 8.2. Prior to this period, post-war regulatory institutions such as the IMF, the World Bank, the General Agreement on Tariffs and Trade (GATT) and, until the early 1970s, the Bretton Woods agreement had established a broadly Keynesian framework for worldwide production and trade. While these arrangements were destabilized during the 1970s and 1980s, it was not until the 1990s that a genuinely post-Keynesian, neo-liberalized global rule-regime was consolidated. Through the market-disciplinary redesign of supranational institutional arrangements, from the OECD, the World Bank and the IMF to the WTO, the post-Maastricht EU and NAFTA, neo-liberalization now came to restructure the very geo-institutional frameworks governing national and subnational regulatory experimentation. This neo-liberalized geo-institutional configuration is frequently referred to as the 'Washington Consensus', but its regulatory elements and political-economic geographies cannot be reduced to a purely US-based hegemonic project. Rather, the new constitutionalism associated with the ascendant neo-liberalized global rule-regime has also hinged upon forms of regulation and enforcement produced and administered by the WTO; supranational regulatory bodies, multinational organizations and regional free trade zones; as well as quasi-independent global economic bodies such as the Bank for International Settlements (Gill 2003). The consolidation of such neo-liberalized rule-regimes, which are designed to impose market-disciplinary parameters upon national and subnational institutions, is arguably one of the most

far-reaching consequences of the last three decades of neo-liberalizing political-economic reform.

As the bottom row of Figure 8.2 indicates, neo-liberalization processes have also transformed the very geo-institutional frameworks within which regulatory uneven development unfolds, causing otherwise contextually specific forms of regulatory experimentation and inter-jurisdictional policy transfer to be canalized along market-disciplinary pathways. This rule-regime has certainly not dissolved the path dependency and contextual specificity of neo-liberalizing reform projects. But it has qualitatively transformed what might be termed the 'context of context' – the political, institutional and juridical terrain within which locally, regionally and nationally specific pathways of regulatory restructuring are forged. No moving map of neo-liberalization can be complete, we would argue, without attention to such macro-spatial frameworks and politico-institutional parameters, for they have crucial implications for contextually situated processes of regulatory experimentation, whether market-disciplinary or market-restraining.

Scenarios of counter-neo-liberalization: toward a progressive new constitutionalism?

The medium- and long-term trajectories of regulatory restructuring are inherently unpredictable; they remain to be fought out through the conjuncturally embedded struggles provoked by the contradictions of earlier rounds of neo-liberalization. Nonetheless, the preceding considerations suggest an approach for confronting such questions – one that attends simultaneously to global regulatory shocks and their place-, territory- and scale-specific ramifications, while avoiding dualistic transition models and associated declarations of neo-liberalism's demise. Here we sketch several possible scenarios for future trajectories of regulatory restructuring (Figure 8.2; for a more detailed discussion of contemporary pathways of crisis-driven regulatory restructuring, see Peck *et al.* 2010, 2012, 2013).

The upper row of Figure 8.2 presents each of the three dimensions of neo-liberalization; the far left column lists four scenarios for future pathways of regulatory restructuring. As indicated by the shaded pattern in the figure, each of the four scenarios entails a different degree of neo-liberalization, defined with reference to some combination amongst the three dimensions listed in the top row.

The scenario of zombie neo-liberalization is depicted in the first row. In this scenario, despite its disruptive, destructive consequences, the global economic crisis of 2008–12 does not significantly undermine

	DIMENSIONS OF REGULATORY RESTRUCTURING		
	CONTEXT-SPECIFIC FORMS OF REGULATORY EXPERIMENTATION	**SYSTEMS OF INTER-JURISDICTIONAL POLICY TRANSFER**	**RULE-REGIMES AND PARAMETERIZATION PROCESSES**
Scenario 1: zombie neo-liberalization	Orthodox neo-liberal ideology is severely undermined, but there is a continued neo-liberalization of each of the three dimensions of regulatory restructuring, often through technocratic means Crisis tendencies and failures of market-driven regulatory arrangements contribute to a further entrenchment of neo-liberalization projects as putative 'solutions' to persistent regulatory dilemmas across scales, territories and contexts		
Scenario 2: disarticulated counter-neo-liberalization	Tendential mobilization of market-constraining, redistributive and/or 'push-back' regulatory experiments across dispersed, disarticulated contexts at local, regional and national scales	Continued neo-liberalization of transnational policy transfer systems and rule-regimes Counter-liberalization projects remain relatively fragmented, disconnected and poorly coordinated – they have not significantly infiltrated multilateral, supranational or global institutional arenas Macro-spatial rule-regimes continue to be dominated by market logics, despite persistent critiques from extra-institutional locations and 'from below' (e.g. the global justice movement)	
Scenario 3: orchestrated counter-neo-liberalization	Intensified orchestration, mutual recursion and tendential co-evolution of market-constraining, redistributive regulatory experiments across increasingly interlinked contexts Thickening, intensification and extension of networks of policy transfer based upon (progressive or regressive) alternatives to market rule		Continued neo-liberalization of rule-regimes: counter-liberalization projects may now begin to infiltrate macro-spatial rule-making institutions (e.g. the World Bank, the European Union) but do not succeed in reorienting their basic market-driven orientations
Scenario 4: progressive, communal or socialist neo-constitutionalism	Continued intensification of (progressive or reactionary forms of) market-constraining, redistributive, re-embedding and socializing regulatory experimentation Continued elaboration and transnational consolidation of market-constraining, redistributive and socializing forms of cross-jurisdictional policy transfer Destabilization/dismantling of neo-liberalized rule-regimes; construction of alternative, market-constraining, redistributive and socializing frameworks for macro-spatial regulatory organization		

Figure 8.3 Counter-neo-liberalization: future pathways and scenarios
Note: Shaded cells denote the spheres of regulatory restructuring in which neo-liberalization is most pronounced.

the neo-liberalization tendencies of the last three decades (Peck *et al.* 2010). The new constitutionalist, neo-liberalized rule-regime that had been consolidated during the 1990s and early 2000s may be recalibrated to restrain certain forms of financial speculation, but its basic orientation toward imposing market-disciplinary parameters on supranational, national, regional and local economies remains dominant. Orthodox neoliberal ideology is now increasingly called into question, but the political machinery of state-imposed market discipline remains essentially intact; policy agendas continue to be subordinated to the priority of maintaining investor confidence and a 'good business climate'; and policy agendas such as free trade, privatization, flexible labour markets and urban territorial competitiveness continue to be taken for granted. In this scenario, as Bond (2009: 193) argues, the most likely outcome of the current geo-economic crisis is a 'relegitimised neo-liberalism and imperialism'. Consequently, there is a further entrenchment of market-disciplinary regulatory arrangements, lubrication of neo-liberalized systems of interjurisdictional policy transfer, and entrenchment of neo-liberalized forms of regulatory experimentation.

In a second scenario, disarticulated counter-neo-liberalization, a new constitutionalist, neo-liberalized rule-regime and associated systems of policy transfer persist, but meanwhile the global economic crisis offers new strategic opportunities, albeit within relatively dispersed politico-institutional arenas, for social forces concerned to promote market-restraining or market-transcending regulatory strategies. Even prior to the 2008–12 global financial crisis, there had been plenty of organized opposition to neo-liberal policies by workers' movements, peasant movements, urban movements, various strands of the anti-globalization movement and, in some cases, by official social democratic, communist and populist political parties. There will be new strategic openings for such social movements and political organizations to pursue market-restraining agendas in the future. In this scenario, however, such counter-neo-liberalizing projects remain disarticulated – they are largely confined to localized or nationalized parameters while still being embedded within geo-institutional contexts that are dominated by market-disciplinary regulatory arrangements and policy-transfer networks. Clearly, the experiments associated with disarticulated forms of counter-neo-liberalization are a strategically essential frontier for exploring alternatives to a neo-liberalized geo-economic order. But, unless they are interconnected across places, territories and scales, and linked to institutional recalibrations, such initiatives confront systemic constraints that may undermine their medium-to-long-term reproducibility, their capacity for interspatial generalization will be circumscribed.

Under a third scenario, orchestrated counter-neo-liberalization, market-restraining regulatory experimentation no longer occurs in isolation, as relatively self-enclosed 'outposts' of dissent, but is recursively interconnected across places, territories and scales. Under these conditions, there are sustained efforts to create anti-systemic networks of knowledge sharing, policy transfer and institution building amongst diverse sites of counter-neo-liberal mobilization. This scenario may assume a statist form – for instance, a coalition of neo-Keynesian, social democratic or eco-socialist governments. It may also assume a movement-based form – for instance, that of the World Social Forum, with its project of creating an alternative network of progressive policy transfer. Whether state-driven or movement-led, such networks gain significance and become increasingly well coordinated in this scenario, possibly leading to the development of new, solidaristic and ecologically sane visions for global economic regulation and interspatial relations. The creation of transnational networks for policy transfer was essential to the consolidation, reproduction and evolution of neo-liberalization, and such networks will be equally essential to any project(s) that aspire to destabilize market-disciplinary geo-regulatory arrangements. In the scenario of orchestrated counter-neo-liberalization, however, the increasingly coordinated counter-neo-liberalizing policy transfer networks still lack the capacity to infiltrate the echelons of global political-economic power, such as multilateral agencies, supranational trading blocs and powerful national governments. Consequently, even though the neo-liberalized global rule-regime may be destabilized, it survives intact.

Can an alternative global rule-regime be forged? Under a fourth scenario, progressive (or solidaristic, or socialist) new constitutionalism, the neo-liberalized global rule-regime is subjected to greater public scrutiny and popular critique. Subsequently, the inherited institutional frameworks of new constitutionalism are infiltrated by social forces and political alliances oriented toward market-restraining agendas. These might include capital and exchange controls; debt forgiveness; progressive tax regimes; non-profit-based, cooperatively run, de-globalized credit schemes; intensified global redistribution; public works investments; and the de-commodification of basic social needs such as shelter, water, transportation, healthcare and utilities. Out of the ashes of the neo-liberalized, new constitutionalist global rule-regime emerges an alternative, social democratic, solidaristic and/or eco-socialist model of global regulation. The substantive political content of such a rule-regime is – indeed, has long been – a matter of intense debate within the global left (see, for example, Amin 2009; Gorz 1989; Holloway 2002). But one of its core elements would be a radical democratization of decision-making and

allocation capacities – a prospect that stands in stark contrast to the principles of market discipline and corporate rule on which neo-liberalization has been based.

Conclusions

The new constitutionalist/neo-liberalized rule-regime has been more than three decades in the making, and throughout this period, it has been in a perpetual state of contestation and reconstruction. What has not killed it, one might say, has made it stronger. Certainly, counter-neo-liberalizing regulatory experiments remain strategically crucial. But in the absence of orchestrated networks of counter-neo-liberalizing policy transfer, they are likely to remain confined within particular places and scales. Just as importantly, the construction of counter-neo-liberalizing systems of policy transfer, whether amongst social movements, cities, regions or states, represents a major step forward for progressive activists and policymakers. But, in the absence of a plausible vision for an alternative global rule-regime, such networks are likely to remain interstitial, mere irritants to the global machinery of neo-liberalization, rather than transformative threats to its hegemonic influence.

Our reading of the near-term prospects suggests that the neo-liberal power grid is already becoming markedly more multipolar than in the past, with ascendant global powers – from Beijing to Moscow – asserting their own (market) interests within enlarged regulatory arenas such as the Group of 20. This raises the question of whether the worldwide rules of financial transactions, monetary exchange and trade, as currently regulated through such international fora and through the multilateral financial institutions, will be qualitatively reformed in ways that contest their earlier, pro-market orientation, or whether they will merely be adjusted or reconstituted in ways that perpetuate such an orientation (Bond 2009). How far the rules will change when new players join the game cannot be predicted at this point, though some form of adaptive change (at least) seems certain. The moment of systemic crisis now having passed, it may be that the prospects of transformative regulatory change are likewise receding. Soberingly, this must be confronted as a failure of alternative visions and movements – as well as testimony to the doggedness of neo-liberal rule and its alignment with prevailing power structures. The contradictions and limits of market-based regulation persist, however, even if the regulatory landscape is, for the moment at least, destabilized. The challenging question that remains, then, concerns not only what progressive alternatives to neo-liberalism and new constitutionalism might look like but also what it will take for alternatives to bite?